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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,171	11/09/1999	ANDREAS BLECKMANN	BEIERSDORF59	6227

7590 06/07/2002
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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/07/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/436,171

Applicant(s)

BLECKMANN ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-9 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claims 1-5, 7-9 and 11 are pending. The Amendment filed March 6, 2002, and entered April 25, 2002, amended claim 1, added claim 11, and cancelled claims 6 and 10.

Continued Prosecution Application

The request filed on April 12, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/436171 is acceptable and a CPA has been established. An action on the CPA follows.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) The term "cellulose derivative" in claim 1 (part (c)) is vague and indefinite, as the metes and bounds of the claim are not clear defined. This term is not defined in the specification and one of ordinary skill in the art would not be apprised of all the possible compounds encompassed by this term.

(ii) The phrase "condensation products of polyglycols and amines" in claim 1 (part c) is vague and indefinite, as the metes and bounds of the claim are not clear defined. This phrase is not defined in the specification and one of ordinary skill in the art would not be apprised of all the possible compounds encompassed by this phrase.

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(iii) Claims 4 and 5 are vague and indefinite, as they recite percent weights without any units of measurement.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al. (WO 98/17232) in view of Dupuis et al. (6,338,858) in further view of Yoneyama et al. (5,015,469).

Schreiber et al. teach water-in-oil emulsions comprising 30-85% of an aqueous phase, and preferably 1-20% of a lipid phase, and a surface active substance of formula (I) of the instant invention. PEG-30 dipolyhydroxystearate is disclosed a surface-active substance. Oils disclosed include branched and unbranched hydrocarbons. The reference lacks cationic polymers and preferred oils. See pg. 4-15; pg. 17; pg. 19-40.

Dupuis et al. teach aqueous solid topical compositions. Water-in-oil emulsions are disclosed as cosmetic forms. Cationic polymers, comprising 0.001-5% of the compositions, are disclosed as conditioning agents for use in the compositions. Specifically disclosed as a cationic polymer is JR 400, wherein JR 400 is polyquaternium-10. See Col. 1, lines 1-30; Col. 5, lines 51-57; Col. 7, lines 59-Col. 8, line 20.

Yoneyama et al. teach water-in-oil emulsion type cosmetics comprising cationic surfactants. Hydrocarbon oils such as liquid paraffin, isopropyl myristate, waxes such as

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petrolatum, and silicone oils are disclosed as comprising the oil components. See abstract; Col. 5, line 5-Col. 6, line 2.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the cationic polymers of Dupuis et al. to the compositions of Schreiber et al. because a) Schreiber et al. and Dupuis et al. are both directed to cosmetic water-in-oil stick emulsions; b) Dupuis et al. teach that adding cationic polymers to such emulsions results in a conditioning effect; hence, the addition of cationic polymers for cosmetic purposes in the compositions of Schreiber et al. would be within the skill of one in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the liquid paraffin of Yoneyama et al. for the oils taught by the combined references because a) the combined references and Yoneyama et al. are both directed to water-in-oil cosmetic emulsions; b) the combined references teach isopropyl myristate and silicone oils for use in their oil phase and Yoneyama et al. teach liquid paraffin as interchangeable with isopropyl myristate and silicone oils in the oil phase of cosmetic water-in-oil emulsions; hence, the replacement of one for the other for cosmetic purposes would be within the skill of one in the art.

Unexpected Results

It is applicant's burden to demonstrate unexpected results over the closest prior art. See MPEP 716.02, also 716.02 (a) - (g). Furthermore, the unexpected results should be demonstrated with evidence that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Moreover, evidence as to any unexpected benefits must be "clear and convincing"

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In re Lohr, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, *In re Linder*, 173 USPQ 356 (CCPA 1972).

In the instant case, there are no unexpected results.

Response to Arguments

Applicant argues, “applicants’ invention is directed toward a W/O emulsion (‘a stable mixture of two or more immiscible liquids held in suspension by small percentages of substances called emulsifiers. . .whereas the invention of Schreiber is directed toward cosmetic and skin care sticks (i.e. solid products)’”. This argument is not persuasive. It is respectfully pointed out that the instant invention and Schreiber both teach compositions comprising a liquid phase, an oil phase, and the same water-in-oil emulsifier in the same percent weights. Thus, if Applicant achieves different results than that of the invention of Schreiber, it may be due to some limitation not present in the instant claims. Furthermore, the Examiner respectfully points out that the reference is relied upon for its teachings as a whole and not just its preferred embodiments. In the instant case, the Schreiber reference teaches water in oil emulsions as a cosmetic form. See page 1, line 2.

The remainder of Applicant’s arguments has been considered but is moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on T-F (6-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
May 9, 2002

RUSSEL TRAVERS
PRIMARY EXAMINER
GROUP 1200